

# Additional Information on Enlarging the Scope of the Convention

In its annual report to Congress, the Department of Commerce was directed to review additional means for enlarging the scope of the Convention or otherwise increasing its effectiveness, taking into account the views of private sector participants and representatives of nongovernmental organizations. Such additional means are to include, but not be limited to, improved record keeping provisions and the possible expansion of the applicability of the Convention to additional individuals and organizations. The IAFCA also asks that the report assess the impact on U.S. business of Section 30A of the Securities Exchange Act of 1934 and Sections 104 and 104A of the FCPA.

## **Additional Individuals and Organizations and Other Means of Enlarging the Convention**

Chapter 6 reviewed U.S. efforts to strengthen the Convention by broadening the prohibitions. The U.S. government has focused on expanding coverage explicitly to include a prohibition of the bribery of foreign political parties, party officials, and candidates for public office as in the FCPA. Failure to cover such bribes may prove to be a significant loophole. The OECD Working Group on Bribery is charged with examining these issues as it reviews the five outstand-

ing issues on the Convention. In the context of these discussions, the issue of payments to immediate family members has also been raised by the U.S. informally with Working Group members. As noted earlier in the report, however, most signatories do not support any changes in the scope of the Convention's coverage at this time. They prefer to monitor implementation of the Convention before making any decisions on amendments to the Convention.

Nonetheless, the United States has continued to press for further discussion of political parties, party officials, and candidates for public office. Commerce Under Secretary for International Trade David Aaron, for example, raised these issues in bilateral meetings with counterparts at the May 1999 OECD ministerial meeting. As a result of these and other vigorous U.S. interventions, the U.S. position calling for further study of outstanding issues was reflected in the 1999 ministerial communique. At Working Group meetings during the past year, the United States continued to raise concerns about the lack of coverage of bribes to political parties, party officials, and candidates. Although other Working Group members have resisted further discussion of changes to the Convention, they did support having the Working Group provide an update on outstanding issues to ministers at the annual OECD meeting in June 2000. In the year ahead, we will con-

tinue to work to keep the outstanding issues of key concern to the United States on the OECD's agenda.

After we have more experience with monitoring implementation of the Convention, we will be in a better position to assess its effectiveness in combating international bribery. In making our assessment, we will continue to consult with representatives of the private sector and nongovernmental organizations to obtain their views.

## **Improved Record Keeping**

The provisions of Article 8 of the Convention on accounting practices are not as comprehensive as those in Section V of the 1997 Recommendation of the Council on Combating Bribery in International Business Transactions. Article 8 directs signatories to take certain measures regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards in order to prohibit certain practices that might facilitate the bribing of foreign public officials or of hiding such bribery. The 1997 recommendation, however, addresses a wider range of safeguards against corruption, including accounting requirements, independent external audits, and internal company controls.

The United States would like to see signatories to the Convention implement all elements of Section V of the 1997 recommendation. OECD members had previously accepted the 1997 recommendation, and the United States will continue to encourage them to institute those practices without delay. Along this line, Transparency International has surveyed OECD members' compliance with the accounting requirements of the Convention. Based on the results of its survey, Transparency International is formulating a proposed expansion of the 1997 recommendation to enhance the books and records, internal company controls, and external audit requirements.

## **Impact on U.S. Business**

The U.S. government has long been aware of the problems that the bribery of foreign public officials poses for international business and good governance. In the 1970s, widely publicized incidents of bribery by U.S. companies damaged the reputation of U.S. business. It was because of such problems that Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system.

Through the FCPA, the United States declared that American companies must act ethically in obtaining foreign contracts.

The FCPA's impact was widely felt. One positive effect was that the law contributed to the perception that U.S. firms operate with greater integrity in the international market. In addition, U.S. businesses were induced to compete on the strength and quality of their goods and services, which helped them to be more competitive throughout the world. But the FCPA also left U.S. firms at a disadvantage relative to their foreign competitors who were able to bribe foreign officials without fear of penalty and even benefitted from being able to deduct such bribes from their taxes. This disparity was one of the reasons the U.S. government sought to convince other countries to prohibit bribes to foreign public officials and enact legislation similar to the FCPA.

Over the past several years, the U.S. government has received reports indicating that the bribery of foreign public officials influenced the awarding of billions of dollars in contracts around the world. While it is not possible to verify the accuracy or completeness of these reports, we believe that they are indicative of how widespread the bribery of foreign public officials has been in recent years. Based on information available from a variety of sources, it is estimated that in the period from May 1994 through April 2000, the outcome of 353 contracts valued at \$165 billion may have been affected by bribery involving foreign firms. U.S. firms are believed to have lost 92 of these contracts, worth approximately \$26 billion, to foreign competitors offering bribes. In many other cases, U.S. firms withdrew from contract competitions because foreign officials demanded bribes. Bribery allegations were connected to contracts in several sectors, including energy, telecommunications, construction, transportation, and military procurement.

According to available information, firms from fifty countries are alleged to have offered bribes, and officials in 104 countries are alleged to have received them. The largest number of incidents, about 29 percent of the total, was reported to have occurred in Asia. Among the alleged bribe recipients in other regions, 25 percent were in Latin America, 20 percent in Europe, 13 percent in the Middle East, and 13 percent in Sub-Saharan Africa.

The amount of reported bribe offers was worth up to 30 percent of a contract's value. Firms alleged to have offered bribes won nearly all the contracts in the deals for which we have information on the out-

come. When companies alleged to have offered bribes lost a competition for a contract, it usually was to other firms alleged to have offered bribes.

Entry into force of the Convention in February 1999 represented an important step forward in our effort to level the playing field for U.S. business in the global marketplace. We are concerned, nonetheless, that even when the Convention is fully implemented, differences in coverage between the Convention and the FCPA may result in continued advantages for foreign competitors. For example, failure to prohibit the bribery of parties, party officials, and candidates for public office could create a loophole through which bribes may be directed in the future. This is why, as part of our efforts to strengthen the Convention, we have sought to draw the attention of signatories to this loophole and its potential for undermining efforts to eliminate business-related bribery of foreign public officials.

U.S. agencies are taking a variety of measures to help U.S. business deal with the problem of international bribery. As noted elsewhere in this report, U.S. officials are intensifying their outreach to the private sector to solicit its views on how best to implement the Convention and to share information on signatories' laws and policies regarding bribery. Special attention is being given to the needs of small and medium-size exporters, which face an especially difficult challenge in dealing with international bribery and corruption.

Companies of all sizes are now able to report problems with bribery directly to the Commerce Department on the Trade Complaint Hotline of the Trade Compliance Center. In addition, the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure enables U.S. firms and individuals to obtain an opinion as to whether specific prospective conduct conforms to its FCPA enforcement policy. These procedures are available to assist firms and individuals in determining whether a particular transaction falls within the purview of the law. We will continue to assess the impact of the Convention on U.S. business in determining our policies on implementation of the Convention and on efforts to strengthen its provisions.

